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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 8:18-cv-02153-JLS-DFM

STIPULATED PROTECTIVE ORDER

1 BIO SEAWEED GEL LIMITED,
2 Counter-Plaintiff,
3 v.
4 ODYSSEY NAIL SYSTEMS, INC.,
5 Counter-Defendant.

6

7 **STIPULATED PROTECTIVE ORDER**

8

9 1. A. PURPOSES AND LIMITATIONS

10 Discovery in this action is likely to involve production of confidential,
11 proprietary or private information for which special protection from public disclosure
12 and from use for any purpose other than prosecuting this litigation may be warranted.
13 Accordingly, the parties hereby stipulate to and petition the Court to enter the
14 following Stipulated Protective Order. The parties acknowledge that this Order does
15 not confer blanket protections on all disclosures or responses to discovery and that the
16 protection it affords from public disclosure and use extends only to the limited
17 information or items that are entitled to confidential treatment under the applicable
18 legal principles.

19 B. GOOD CAUSE STATEMENT

20 This action is likely to involve trade secrets, formulas, manufacturing methods
21 and, other valuable research, development, commercial, financial, technical and/or
22 proprietary information for which special protection from public disclosure and from
23 use for any purpose other than prosecution of this action is warranted. Such
24 confidential and proprietary materials and information consist of, among other things,
25 confidential research, development, or commercial information, information
26 otherwise generally unavailable to the public, or which may be privileged or otherwise
27 protected from disclosure under state or federal statutes, court rules, case decisions,
28 or common law. Accordingly, to expedite the flow of information, to facilitate the

1 prompt resolution of disputes over confidentiality of discovery materials, to
2 adequately protect information the parties are entitled to keep confidential, to ensure
3 that the parties are permitted reasonable necessary uses of such material in preparation
4 for and in the conduct of trial, to address their handling at the end of the litigation, and
5 serve the ends of justice, a protective order for such information is justified in this
6 matter. It is the intent of the parties that information will not be designated as
7 confidential for tactical reasons and that nothing be so designated without a good faith
8 belief that it has been maintained in a confidential, non-public manner, and there is
9 good cause why it should not be part of the public record of this case.

10 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
11 SEAL

12 The parties further acknowledge, as set forth in Section 12.3, below, that this
13 Stipulated Protective Order does not entitle them to file confidential information under
14 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
15 standards that will be applied when a party seeks permission from the court to file
16 material under seal.

17 There is a strong presumption that the public has a right of access to judicial
18 proceedings and records in civil cases. In connection with non-dispositive motions,
19 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
20 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
21 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics, Inc.*,
22 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
23 cause showing), and a specific showing of good cause or compelling reasons with
24 proper evidentiary support and legal justification, must be made with respect to
25 Protected Material that a party seeks to file under seal. The parties' mere designation
26 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
27 submission of competent evidence by declaration, establishing that the material sought

1 to be filed under seal qualifies as confidential, privileged, or otherwise protectable—
2 constitute good cause.

3 Further, if a party requests sealing related to a dispositive motion or trial, then
4 compelling reasons, not only good cause, for the sealing must be shown, and the relief
5 sought shall be narrowly tailored to serve the specific interest to be protected. *See*
6 *Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item
7 or type of information, document, or thing sought to be filed or introduced under seal
8 in connection with a dispositive motion or trial, the party seeking protection must
9 articulate compelling reasons, supported by specific facts and legal justification, for
10 the requested sealing order. Again, competent evidence supporting the application to
11 file documents under seal must be provided by declaration.

12 Any document that is not confidential, privileged, or otherwise protectable in
13 its entirety will not be filed under seal if the confidential portions can be redacted. If
14 documents can be redacted, then a redacted version for public viewing, omitting only
15 the confidential, privileged, or otherwise protectable portions of the document, shall
16 be filed. Any application that seeks to file documents under seal in their entirety
17 should include an explanation of why redaction is not feasible.

18

19 2. DEFINITIONS

20 2.1 Action: this pending federal lawsuit.

21 2.2 Challenging Party: a Party or Non-Party that challenges the designation
22 of information or items under this Order.

23 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
24 how it is generated, stored or maintained) or tangible things that qualify for protection
25 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
26 Statement.

27 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
28 support staff).

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced or
7 generated in disclosures or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as
10 an expert witness or as a consultant in this Action.

11 2.8 House Counsel: attorneys who are employees of a party to this Action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.9 Non-Party: any natural person, partnership, corporation, association or
15 other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees of a party
17 to this Action but are retained to represent or advise a party to this Action and have
18 appeared in this Action on behalf of that party or are affiliated with a law firm that has
19 appeared on behalf of that party, and includes support staff.

20 2.11 Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.13 Professional Vendors: persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)
28 and their employees and subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5

6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only
8 Protected Material (as defined above), but also (1) any information copied or extracted
9 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
10 Protected Material; and (3) any testimony, conversations, or presentations by Parties
11 or their Counsel that might reveal Protected Material.

12 Any use of Protected Material at trial shall be governed by the orders of the trial
13 judge. This Order does not govern the use of Protected Material at trial.

14

15 4. DURATION

16 Once a case proceeds to trial, information that was designated as
17 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
18 as an exhibit at trial becomes public and will be presumptively available to all
19 members of the public, including the press, unless compelling reasons supported by
20 specific factual findings to proceed otherwise are made to the trial judge in advance
21 of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing
22 for sealing documents produced in discovery from “compelling reasons” standard
23 when merits-related documents are part of court record). Accordingly, the terms of
24 this protective order do not extend beyond the commencement of the trial.

25

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.

28 Each Party or Non-Party that designates information or items for protection

1 under this Order must take care to limit any such designation to specific material that
2 qualifies under the appropriate standards. The Designating Party must designate for
3 protection only those parts of material, documents, items or oral or written
4 communications that qualify so that other portions of the material, documents, items
5 or communications for which protection is not warranted are not swept unjustifiably
6 within the ambit of this Order.

7 Mass, indiscriminate or routinized designations are prohibited. Designations
8 that are shown to be clearly unjustified or that have been made for an improper
9 purpose (e.g., to unnecessarily encumber the case development process or to impose
10 unnecessary expenses and burdens on other parties) may expose the Designating Party
11 to sanctions.

12 If it comes to a Designating Party's attention that information or items that it
13 designated for protection do not qualify for protection, that Designating Party must
14 promptly notify all other Parties that it is withdrawing the inapplicable designation.

15 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
16 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
17 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
18 under this Order must be clearly so designated before the material is disclosed or
19 produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic
22 documents, but excluding transcripts of depositions or other pretrial or trial
23 proceedings), that the Producing Party affix at a minimum, the legend
24 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
25 contains protected material. If only a portion of the material on a page qualifies for
26 protection, the Producing Party also must clearly identify the protected portion(s)
27 (e.g., by making appropriate markings in the margins).

1 A Party or Non-Party that makes original documents available for inspection
2 need not designate them for protection until after the inspecting Party has indicated
3 which documents it would like copied and produced. During the inspection and before
4 the designation, all of the material made available for inspection shall be deemed
5 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
6 copied and produced, the Producing Party must determine which documents, or
7 portions thereof, qualify for protection under this Order. Then, before producing the
8 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
9 to each page that contains Protected Material. If only a portion of the material on a
10 page qualifies for protection, the Producing Party also must clearly identify the
11 protected portion(s) (e.g., by making appropriate markings in the margins).

12 (b) for testimony given in depositions that the Designating Party identifies
13 the Disclosure or Discovery Material on the record, before the close of the deposition
14 all protected testimony.

15 (c) for information produced in some form other than documentary and for
16 any other tangible items, that the Producing Party affix in a prominent place on the
17 exterior of the container or containers in which the information is stored the legend
18 “CONFIDENTIAL.” If only a portion or portions of the information warrants
19 protection, the Producing Party, to the extent practicable, shall identify the protected
20 portion(s).

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
22 failure to designate qualified information or items does not, standing alone, waive the
23 Designating Party’s right to secure protection under this Order for such material. Upon
24 timely correction of a designation, the Receiving Party must make reasonable efforts
25 to assure that the material is treated in accordance with the provisions of this Order.

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1 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37-1 et seq.

7 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
8 joint stipulation pursuant to Local Rule 37-2.

9 6.4 The burden of persuasion in any such challenge proceeding shall be on
10 the Designating Party. Frivolous challenges, and those made for an improper purpose
11 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
12 expose the Challenging Party to sanctions. Unless the Designating Party has waived
13 or withdrawn the confidentiality designation, all parties shall continue to afford the
14 material in question the level of protection to which it is entitled under the Producing
15 Party's designation until the Court rules on the challenge.

16

17 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is
19 disclosed or produced by another Party or by a Non-Party in connection with this
20 Action only for prosecuting, defending or attempting to settle this Action. Such
21 Protected Material may be disclosed only to the categories of persons and under the
22 conditions described in this Order. When the Action has been terminated, a Receiving
23 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons
26 authorized under this Order.

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
2 only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
4 as employees of said Outside Counsel of Record to whom it is reasonably necessary
5 to disclose the information for this Action;

6 (b) the officers, directors, and employees (including House Counsel) of the
7 Receiving Party to whom disclosure is reasonably necessary for this Action;

8 (c) Experts (as defined in this Order) of the Receiving Party to whom
9 disclosure is reasonably necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff;

13 (f) professional jury or trial consultants, mock jurors, and Professional
14 Vendors to whom disclosure is reasonably necessary for this Action and who have
15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information;

18 (h) during their depositions, witnesses, and attorneys for witnesses, in the
19 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
20 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
21 not be permitted to keep any confidential information unless they sign the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
23 by the Designating Party or ordered by the court. Pages of transcribed deposition
24 testimony or exhibits to depositions that reveal Protected Material may be separately
25 bound by the court reporter and may not be disclosed to anyone except as permitted
26 under this Stipulated Protective Order; and

27 (i) any mediator or settlement officer, and their supporting personnel,
28 mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies

1 and relief provided by this Order. Nothing in these provisions should be construed as
2 prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is
5 subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-Party
8 that some or all of the information requested is subject to a confidentiality agreement
9 with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the Stipulated
11 Protective Order in this Action, the relevant discovery request(s), and a reasonably
12 specific description of the information requested; and

13 (3) make the information requested available for inspection by the Non-
14 Party, if requested.

15 (c) If the Non-Party fails to seek a protective order from this court within 14
16 days of receiving the notice and accompanying information, the Receiving Party may
17 produce the Non-Party's confidential information responsive to the discovery request.
18 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
19 any information in its possession or control that is subject to the confidentiality
20 agreement with the Non-Party before a determination by the court. Absent a court
21 order to the contrary, the Non-Party shall bear the burden and expense of seeking
22 protection in this court of its Protected Material.

23

24 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
28 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts

1 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
2 persons to whom unauthorized disclosures were made of all the terms of this Order,
3 and (d) request such person or persons to execute the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain
9 inadvertently produced material is subject to a claim of privilege or other protection,
10 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
11 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
12 may be established in an e-discovery order that provides for production without prior
13 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
14 parties reach an agreement on the effect of disclosure of a communication or
15 information covered by the attorney-client privilege or work product protection, the
16 parties may incorporate their agreement in the stipulated protective order submitted to
17 the court.

18

19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the Court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order, no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in this
25 Stipulated Protective Order. Similarly, no Party waives any right to object on any
26 ground to use in evidence of any of the material covered by this Protective Order.

27 12.3 Filing Protected Material. A Party that seeks to file under seal any
28 Protected Material must comply with Local Civil Rule 79-5. Protected Material may

1 only be filed under seal pursuant to a court order authorizing the sealing of the specific
2 Protected Material at issue. If a Party's request to file Protected Material under seal is
3 denied by the court, then the Receiving Party may file the information in the public
4 record unless otherwise instructed by the court.

5

6 **13. FINAL DISPOSITION**

7 After the final disposition of this Action, as defined in paragraph 4, within 60
8 days of a written request by the Designating Party, each Receiving Party must return
9 all Protected Material to the Producing Party or destroy such material. As used in this
10 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
11 summaries, and any other format reproducing or capturing any of the Protected
12 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
13 must submit a written certification to the Producing Party (and, if not the same person
14 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
15 category, where appropriate) all the Protected Material that was returned or destroyed
16 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
17 compilations, summaries or any other format reproducing or capturing any of the
18 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
19 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
20 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
21 attorney work product, and consultant and expert work product, even if such materials
22 contain Protected Material. Any such archival copies that contain or constitute
23 Protected Material remain subject to this Protective Order as set forth in Section 4
24 (DURATION).

25

26 **14. VIOLATION**

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28

Any violation of this Order may be punished by appropriate measures
including, without limitation, contempt proceedings and/or monetary sanctions.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: May 23, 2019

3 BURFORD PERRY, LLP

4 By: /s/ Robert R. Burford

5 Robert R. Burford (pro hac vice)
6 Shawn A. Johnson (pro hac vice)
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29 *Counsel for Bio Seaweed Gel Limited*

1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
2
3 DATED: April 13, 2020

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6 Honorable Douglas F. McCormick
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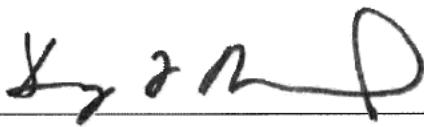

Honorable Douglas F. McCormick
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ in the case of Case No. 8:18-cv-02153-JLS-DFM, *Odyssey Nail Systems Inc. v. Bio Seaweed Gel Limited*. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

23 || Date:

24 City and State where sworn and signed:

26 Printed name:

28. Signatures

CERTIFICATE OF SERVICE

I certify that on May 23, 2019, a copy of the foregoing document was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on all counsel of record.

/s/ Robert R. Burford

Robert R. Burford